

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
DialToneServices, L.P.)	
Petition for Waiver of Section 54.307(c))	WC Docket No.08-71
of the Commission's Rules)	

DIALTONESERVICES, L.P. PETITION FOR WAIVER

DialToneServices, L.P. (“DTS”), by its attorneys and pursuant to 47 C.F.R. § 1.3, hereby requests a waiver of Section 54.307(c) of the Commission’s Universal Service Fund (“USF”) rules, 47 C.F.R. § 54.307(c). DTS requests a waiver of the December 30, 2010 deadline for filing high cost line count data with the Universal Service Administrative Company (“USAC”). Grant of the requested waiver is consistent with Commission precedent and would be in the public interest.

Background

DTS is a small telecommunications services provider serving residential, small business, and public service clients in some of the most rural and remote parts of Texas. In proceedings in 2005 and 2006, the Public Utility Commission of Texas designated DTS as an eligible telecommunications carrier (“ETC”) in accordance with Section 214(e)(2) of the Communications Act of 1934, as amended (“Act”).¹

¹ 47 U.S.C. § 214(e)(2). DTS applied for and received designation as an ETC and as an eligible telecommunications provider in certain exchanges served by Southwestern Bell Telephone, LP d/b/a SBC Texas and GTE Southwest, Inc. d/b/a Verizon Southwest. *See Application of DialToneServices, L.P. (DTS) for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. SUBST. R. 26.418*, Docket No.

In order to receive certain high-cost support, a competitive ETC must file working line count data with USAC each quarter. Line count data for the fourth quarter is due by December 30 of each year. *See* 47 C.F.R. § 54.307(c). On December 31, 2010, DTS made its first-ever untimely USAC filing – a one-day-late Form 525. The delay occurred solely because of a technical incompatibility between new DTS computers and the USAC website.

Prior to December 2010, DTS had a perfect history of timely filing all USAC forms required in connection with USF contributions and USF distributions. Consistent with that history, on December 30, 2010, DTS President William Dorran attempted to file DTS' Form 525 for the fourth quarter. After attempting to create and enter data into DTS' Form 525, Mr. Dorran discovered the website application is not compatible with Macintosh-based web browsers. DTS had converted its office to Macintosh computers in October 2010, and had not encountered any other issues when logged into the USAC website while using Macintosh computers.²

When the USAC site failed to accept the filing from a Macintosh computer, DTS immediately obtained a Microsoft Windows computer and re-filed the Form 525 the next day, on December 31, 2010, one day after the December 30, 2010 due date.

30765, Order (P.U.C.T. rel. Aug. 2, 2005) (granting ETC designation); *Application of DialToneServices, L.P. (DTS) to Amend Its Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider to Include Certain Exchanges Served by Valor Telecommunications of Texas, L.P. and Sprint/United Telephone Company of Texas*, Docket No. 31399, Order and Notice of Approval (P.U.C.T. rel. Sept. 2, 2005); *Application of DialToneServices, L.P. (DTS) for Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider in Certain Uncertificated Areas*, Docket No. 31401, Order and Notice of Approval (P.U.C.T. rel. Sept. 2, 2005).

² *See* Exhibit 1, Affidavit of William Dorran. Also attached as Exhibit 2 are excerpts from USAC's E-File User Manual. Page 103 provides "information about how the E-File Application interacts with your web browser and computer operating system." The manual states that the site is "optimized for version 7.0 of Microsoft Internet Explorer" but it does not state that other browsers are incompatible. Similarly, a USAC video tutorial titled "Online Form 525 Tutorial for Competitive ETCs" (available at <http://bit.ly/dIswFC>), does not indicate that any specific browser or computer operating system is required to submit a form 525. In addition, it appears that the USAC site will accept filing of a Form 499 made via a Macintosh computer. *See* Exhibit 1.

As noted, until the latest quarterly filing DTS had a perfect record of timely USAC filings. Even in this case, DTS attempted to file on time, and DTS will use Microsoft Windows computers, which DTS has used to make USAC filings many times in the past, for all future USAC filings. Accordingly, DTS has revised its internal procedures to ensure compliance with all future universal service filing deadlines.

Good Cause For Grant of the Waiver Exists

The Commission may waive any provision of its rules if a petitioner shows good cause.³ For years, the Commission has waived its line count rules where the particular facts make strict compliance inconsistent with the public interest.⁴ Recently, the FCC granted a number of requests for waiver ranging between one and fourteen days after the filing deadline, determining that good cause existed to waive the applicable line count sections of the Commission's Rules.⁵ The FCC has granted requests for waiver when filers have made mistakes that resulted in one-day-late filings, when the filer has undertaken steps to ensure future compliance,⁶ and it has

³ 47 C.F.R. § 1.3.

⁴ See, e.g., *Smith Bagley, Inc.*, 16 FCC Rcd 15275, 15276 (2001); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 21 FCC Rcd 10155, 10157 (2006) ("Verizon Waiver Order"); *Xfone USA, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules*, Order, WC Docket No. 08-71, 24 FCC Rcd 4813 (2010); *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order CC Docket No. 96-45, FCC Rcd 953 (2007); and *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 22 FCC Rcd 560 (2007).

⁵ See, e.g., *In re Petitions for Waiver of the Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, DA 10- 107 (January 22, 2010) at ¶¶ 21-22, *Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC Petition for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules* ("Fairpoint Waiver"), *Midcontinent Communications Petition for Waiver of Section 54.307(c) of the Commission's Rules* ("Midcontinent Waiver"), *General Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules* ("GCI Waiver"), and *Hopi Telecommunications, Inc. (SAC #452173) Petition for Waiver of Section 54.314(d)(1) Filing Deadline for Submission of Annual Section 254(e) Certification by Tribal and Other Carriers Not Subject to State Jurisdiction* ("Hopi Waiver").

⁶ *GCI Waiver* at ¶ 20.

done so even when the filer did not discover the mistake for several months.⁷ As explained above, DTS was aware of the filing deadline and actually attempted to file, but the USAC site did not accept the filing from a Macintosh computer. DTS immediately purchased a compatible computer and will use it for future filings.

High cost funding for the fourth quarter is crucial for DTS to provide affordable telecommunications service in its rural service areas. The Commission has found that where line count data has been filed only days late and corrective measures have been implemented that denying a request for waiver would undermine an ETC's ability "to ensure that customers have and maintain access to adequate services."⁸ Denying DTS's request would harm the DTS customers in rural Texas who rely on DTS for crucial communications services. The Commission may take into account considerations of hardship and equity in deciding to waive its rules.⁹ In this case, DTS' attempt to timely comply was frustrated by an undocumented technical incompatibility beyond DTS' control, and DTS promptly identified the issue and resolved it by obtaining a new, compatible computer.

Grant of DTS's Waiver Request Would Not Burden Anyone

Granting DTS's request for waiver will not burden USAC or any universal service recipient. Because USAC already has DTS's line count information, USAC can easily calculate the amount owed to DTS. Failing to pay high-cost support that will benefit rural customers, and that is crucial to DTS' ongoing ability to serve those customers, would undermine a core purpose of the Universal Service Fund. Upon grant of this waiver, USAC can simply adjust DTS's USF

⁷ See, e.g., *Syringa Wireless, LLC Petition for Waiver of Section 54.307(c) of the FCC's Rules*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 10-1730 (released November 1, 2010).

⁸ *Verizon Waiver Order*, 21 FCC Rcd at 10157 ¶ 8.

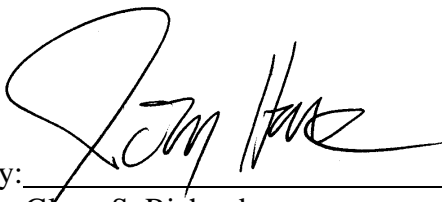
⁹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

disbursements to correct the past amounts using its ongoing true-up process. DTS has notified USAC that it will be seeking this waiver and it will keep USAC apprised of the process.

Because the amount of support DTS requests is nominal compared to the size of the fund, no other universal service recipients would be harmed by grant of DTS' request.

Loss of support based on DTS' fourth quarter line counts could be crippling to DTS and would be contrary to and inconsistent with the policies and objectives of universal service. DTS respectfully requests that the Commission expeditiously grant DTS a waiver of Section 54.307(c) of the Commission's Rules, and direct USAC to distribute to DTS high-cost support based on its fourth quarter 2010 line counts.

Respectfully submitted,


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13 January, 2011

EXHIBIT 1

Affidavit of William Dorran

I, William Dorran, President of DialToneServices L.P., hereby declare as follows:

In October of 2010 DTS' office converted to Apple Macintosh computers, replacing the Microsoft Windows computers we had previously used. In more than two months of use, we did not find any technical incompatibilities using Macintosh computers to access the USAC website.

On December 30, 2010, I attempted to file DTS' Form 525 for the fourth quarter using a Macintosh computer. Although the other functions in the USAC form filing website work with the Macintosh computer, the application allowing data entry and filing of Form 525 is not compatible with web browsers run on Macintosh computers. The attached screen shot shows the error message that I saw when attempting to file with the Macintosh. I obtained this screen shot to support this affidavit, but it is the same error message I received on December 30. I have spoken to USAC staff about this error message. They are aware of the technical incompatibility and recommended that I submit a waiver request to the FCC. DTS will keep USAC staff apprized of the status of this waiver filing.

Immediately after the USAC site failed to accept the December 30 filing, I obtained a Microsoft Windows PC and successfully filed the Form 525 on December 31, 2010.

In subsequent testing to research the incompatibility, I found that the USAC web site apparently will accept a Form 499 that is filed electronically via a Macintosh.

Prior to December, 2010, DTS had a perfect history of timely filing all USAC forms required in connection with USF contributions and USF distributions.

I declare upon penalty of perjury that the foregoing statements are true and accurate to the best of my knowledge and belief.


William Dorran

7 January 2011

This page contains the following errors:

error on line 121 at column 1311: XML declaration allowed only at the start of the document

Below is a rendering of the page up to the first error.

Logged in as **bdorran@dialtonetexas.com**
01/05/2011 16:28:05

Carrier Info	HCL/LSS	ICLS	HCM	IAS	UNE Reporting	Certify/Submit
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EXHIBIT 2



E-FILE APPLICATION USER MANUAL

DOCUMENT VERSION	DATE	REVISIONS	AUTHOR
1.00.01	09/26/2005	INITIAL VERSION	USAC-DO
2.00.01	10/21/2005	POINT RELEASE	USAC-DO
2.01.01	12/20/2005	WEB SITE REVISION	USAC-DO
2.02.01	08/03/2006	499-Q BULK SUBMISSION	USAC-DO
2.03.01	09/14/2006	498 BULK SUBMISSION	USAC-DO
2.04.01	10/30/2006	SLD ONLINE FORMS (BEAR)	USAC-DO
3.00.03	09/10/2007	USER MANAGEMENT UPDATE	USAC-JS
3.01.00	12/31/2007	525 SECTION UPDATE	USAC-JS
3.02.06	08/11/2008	BULK CERTIFICATION	USAC-JS
3.03.01	07/09/2009	497 SECTION UPDATE	USAC-JS
3.04.01	11/04/2009	2009 FCC FORM 498	USAC-JS
3.05.02	11/16/2009	ONLINE ITEM 21	USAC-JS
3.05.03	01/20/2010	FCC FORM 499Q DATA ENTRY UPDATE	USAC-PG
3.05.04	02/18/2010	2010 FCC FORM 499-A	USAC-PG
3.05.05	06/04/2010	FCC FORM 498 DATA ENTRY UPDATE_	USAC-PG

4. Internet Information

This section contains information about how the E-File Application interacts with your web browser and computer operating system.

4.1. Browser Specs

A web browser is a program that allows you to access pages on the World Wide Web. The USAC Web site is optimized for version 7.0 of Microsoft Internet Explorer. If you are using an older browser, download the latest version or contact your Internet Service Provider for more information.

4.2. USAC Web Site

The USAC Web site, www.usac.org, offers a variety of useful information of interest to USF Contributors and Service Providers. The USAC Online section provides access to certain forms and administrative functions associated with the submission of those forms. Retrieval of previously saved or submitted forms is restricted by User ID and Password.

4.3. Cookies

A cookie is a text-only string that is entered into the memory of your web browser. If the lifetime of this value is set to be longer than the time you spend at a site, this string is saved to a file for future reference.

A standard cookie is written to your hard drive and is used to remember you the next time you visit a site. A session cookie resides in the web browser's memory and only retains information until all browsers are closed and the session is thus ended. The USAC Web site uses only session cookies.

4.4. Spawning New Windows

Some pages on the USAC Web site spawn a window (open a new browser window) when they are accessed. For example, when you open a Form, you are spawning a new window. Remember to close the new window whenever you want to exit it and return to where you were in the USAC Web site.

4.5. System Timeout

The E-File Application times out after it has been inactive for one hour or more. If the system has timed out, the login screen will appear when you attempt to resume work. Upon successful completion of the Login process, you will be able to continue from the point the timeout occurred.